

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

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Filed: June 26, 2019

Mr. Benjamin H. Bodzy
Geodis Logistics
7101 Executive Center Drive
Suite 333
Nashville, TN 37027

Re: Case No. 18-2103/18-2217, *Ozburn-Hessey Logistics, LLC v. NLRB*
Originating Case No. : 15-CA-165554

Dear Counsel,

The appendix which you submitted to the court does not comply with the Federal Rules of Appellate Procedure or Sixth Circuit Rules - the specific item or items to be corrected have been highlighted on the enclosed checklist.

The clerk's office has limited resources and its staff will no longer correct even minor defects as a courtesy to counsel. A corrected appendix must be filed by July 1, 2019. If you have any questions after reviewing the checklist, call the clerk's office or review the examples posted with the appendix checklist under "Forms" at www.ca6.uscourts.gov.

Sincerely yours,

s/Cheryl Borkowski
Case Manager
Direct Dial No. 513-564-7035

cc: Mr. Steven Bieszczat
Mr. Stephen Dorr Goodwin
Mr. David Habenstreit
Ms. Elizabeth Ann Heaney
Ms. Keren Wheeler

Enclosure

APPENDIX CHECKLIST

In the Sixth Circuit Court of Appeals and the district courts within the Circuit, most record items are filed electronically. As a result, an appendix generally is not required. Specific appendix requirements are found in the Federal Rules of Appellate Procedure (FRAP) and the Sixth Circuit Local Rules (6 Cir. R.), which are located on the court's website. In cases where an appendix is required, it is filed electronically with only a few exceptions. 6 Cir. R. 30(d)(2).

APPENDIX - WHEN REQUIRED - SPECIFIC CASE TYPES

- District Court Appeals
 - If the district court's record is electronic, an appendix is not required. 6 Cir. R. 30(a). Rather, the party must include in the principal brief a designation of the electronic documents being referenced. 6 Cir. R. 30(g)(1); 6 Cir. R. 28(b)(1)(A)(i).
 - If record items are necessary that are not filed electronically, such as early paper filings, an appendix of those documents is required. 6 Cir. R. 30(a)(1).
 - Special rules apply in state habeas and death penalty litigation; *see infra*.
 - Sealed documents and trial exhibits may present special issues; *see infra*.
- Benefits Review Board - Petitions for Review
 - File appendix of documents necessary to review the decision. 6 Cir. R. 30(b)(1) & (4).
 - The respondent must file the appendix for pro se petitioners proceeding in forma pauperis. 6 Cir. R. 30(c)(3).
- Board of Immigration Appeals - Petitions for Review
 - No appendix is required. The Executive Office of Immigration Review files the administrative record electronically.
- Other Agency Petitions for Review
 - An appendix of documents necessary to review the decision should be filed when the petitioner's principal brief is filed. 6 Cir. R. 30(b)(1) & (4); 6 Cir. R. 30(c).
- Tax Court Appeals
 - File appendix with the principal brief. 6 Cir. R. 30(b)(3); 6 Cir. R. 30(c).
- Social Security Appeals from District Court Judgments
 - No appendix is required.
 - Counsel for the Commissioner must file four paginated copies of the administrative record unless it is waived by the court. 6 Cir. R. 30(f)(1).

- State Habeas (28 U.S.C. § 2254) Appeals from District Court Judgments
 - Appendix must include the state court record material specified in the rule. 6 Cir. R. 30(b)(2)(A). Appendix may be waived if that Rule 5 material is filed electronically in the district court.
 - If the state habeas petitioner is pro se and proceeding in forma pauperis, the respondent must file the appendix. 6 Cir. R. 30(c)(2).
 - Special procedures apply if the state court record is not in writing and/or the state trial proceedings were not transcribed. *See* 6 Cir. R. 30(b)(5).
- Death Penalty Appeals from District Court Judgments
 - Most death penalty litigation is pursuant to 28 U.S.C. § 2254; *see above*.
 - If the district court record includes state court record in paper, file five copies in paper unless waived by the court. *See* 6 Cir. R. 30(d)(2)(C).

FORMAT OF APPENDIX (both electronic and paper)

- COVER. See FRAP 32 (a)(2) and (b) for specifics. Include the following on the cover:
 - Sixth Circuit Case Number(s).
 - Name of the Court: "United States Court of Appeals for the Sixth Circuit."
 - Title of the Case: *Smith v. Jones*.
 - Nature of proceeding and court or agency below.
 - Title identifying the party: e.g., "Appellee's Appendix"
 - Name, address, and telephone number of counsel.
 - Volume number if multiple volumes are filed.
- FORMAT.
 - A Table of Contents must appear at the beginning of each volume, with the record entry number of the item and the appendix page where it appears. 6 Cir. R. 30(e)(2).
 - For transcript, provide an Index with the information specified in 6 Cir. R. 30(e)(2)(B).
 - Pagination for all volumes, both appellant's and appellee's, must be consecutive; for transcript, include original pagination in brackets. 6 Cir. R. 30(e)(1) and (3).
 - Include a certification that the appendix documents are properly part of the district court or agency record. 6 Cir. R. 30(b)(2)(C), (b)(3)(H), (4)(E).
 - Proof of service is required. 6 Cir. R. 30(e)(2)(D).
- OTHER.
 - If no appendix is required and party is designating district court documents in the brief addendum, use Page ID # range, if applicable. *See* 6 Cir. R. 28(b)(1)(A)(i).
 - Consult 6 Cir. R. 30(g) for types of documents that must be designated in addendum.

- Include and file in addendum copies of decisions "not available in a publicly accessible electronic database;" otherwise, do not include. FRAP 32.1(b); 6 Cir. R. 32.1(a).

MISCELLANEOUS

▪ SEALED DOCUMENTS.

- If sealed documents were filed electronically in the district court, it is unnecessary to file an appendix. *See* 6 Cir. R. 30(g)(1).
- If sealed documents were filed in paper in the district court, a sealed appendix of those documents may be filed.
- Documents filed under seal in the district court or agency continue to be filed under seal in this court. *See* 6 Cir. R. 11(c); 6 Cir. R. 25(h). Documents in this category will remain sealed by the clerk without a motion.
- Parties may seek leave to file other documents under seal by electronically filing a motion to seal and providing a copy of the documents at issue. 6 Cir. R. 25(h)(2).

▪ TRIAL EXHIBITS

- Trial exhibits that are electronically filed are accessible to the court of appeals.
- If trial exhibits were not electronically filed, but were admitted in the trial, a party may submit an appendix or digital copy (CD) of the exhibits, *with specific reference to the record indicating where the exhibits were admitted into evidence*. *See* 6 Cir. R. 10(b).
- District courts do not universally retain trial exhibits; a party should not assume that the court of appeals has access to these items.
- In general, the court of appeals will call for physical exhibits only if necessary. 6 Cir. R. 10(b)(2).

If uncertain of any electronic filing procedure or the contents of an appendix to be filed, please contact the case manager before attempting to file. Inquiries are welcome.
